



CHAIRMAN

Federal Communications Commission

Washington, D.C.

January 31, 2003

The Honorable John Conyers, Jr.
U.S. House of Representatives
2426 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Conyers:

I thank you for your letter concerning some of the Federal Communications Commission's upcoming decisions in the areas of local competition and broadband policy. As the Commission endeavors to reach conclusion on many of these critical issues, your input is always valued and appreciated.

At the outset, let me first assure you that every decision this Commission makes in these, and indeed, all, areas of telecommunications law and policy will be grounded in the directives of Congress as outlined in the Telecommunications Act of 1996 and guided solely by the public interest. In the Act, Congress directed the Commission to bring to the American public the benefits of meaningful economic competition, reduced regulation and the rapid deployment of new telecommunications technologies. Our focus, as a consequence, is bringing the American public these benefits—not the benefits that best serve corporate interest, but those that best serve the public interest.

I appreciate your anxiety and take fully to heart the concerns you expressed in your letter. I pledge that the points raised in your letter are being thoroughly considered and weighed in the proceedings. I cannot, however, put this proceeding on hold, as you ask. Please let me explain fully my reasons.

First, the courts are demanding a decision. For example, in the case of the Commission's *Triennial UNE Review*, Commission action is necessary to ensure that *any* rules are in place. As you may know, the United States Court of Appeals for the District of Columbia Circuit vacated our unbundled network element, or so-called UNE, rules last year, and has set a date of February 20, 2003, for their elimination. See *United States Telecomm Assoc. v. FCC*, 2002 WL 31039663 (D.C. Cir. Sept. 04, 2002) (the court originally set a deadline of January 3, 2003; however, the Commission asked that the court extend the deadline and it did so to February 20, 2003). A failure to make a decision by that time means that no UNE rules will exist, having the potential to cause great uncertainty in the marketplace—for CLECs, ILECs and most importantly, consumers.

Second, the instability in the telecommunications sector generally demands that the Commission complete its review of these pressing matters. The Commission is conscious of the fact that a failure to articulate clear, comprehensive and judicially sustainable rules has a negative impact on the marketplace. Further indecision in these areas prevents investors from

investing, companies from moving forward with business plans, and consumers from reaping the benefits of competition, innovation, and new services.

The recent D.C. Circuit decision underscores the need to develop a set of judicially sustainable UNE rules. The fact remains that in the seven years since the Act's passage, the Commission has yet to implement judicially sustainable UNE rules. As you may know, the Commission's first attempt in 1996 was vacated by the Supreme Court in 1999 and, as discussed above, the second attempt was struck down this past summer. The sad truth remains that the Commission has yet to implement the will of Congress as interpreted by both the highest court in the land and the federal court of appeals. This uncertainty has caused great harm to the development of local phone competition and underscores the necessity of the Commission's completion of the *Triennial UNE Review*. See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 16 FCC Rcd 22781, *Notice of Proposed Rulemaking* (rel. Dec. 20, 2001).

Third, the proceedings discussed in your letter have been open for public debate for over a year in one instance (the *Triennial UNE Review*) and eleven and a half months in the other instance (the *Wireline Broadband Proceeding*). See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, *Universal Service Obligations of Broadband Providers*, 17 FCC Rcd 3019, *Notice of Proposed Rulemaking* (rel. Feb. 15, 2003). The American public and Congress have participated in a national debate before the Commission for the better part of the last year, and they continue to advocate their respective views and positions to the Commission.

We, at the Commission, are acutely aware and sensitive to the concerns expressed in your letter as interested parties have come before the Commission to represent their respective views. On January 14, 2003, I testified before the Senate Committee on Commerce, Science, and Transportation. I am attaching a copy of my remarks, which expands on my views in this area. In the end, it is my sincere desire that the Commission will promulgate rules that will stabilize and sustain the competitive environment as envisioned in the Telecommunications Act of 1996.

I pledge to you that this Commission will take your concerns into consideration during our deliberations and conclusion of these matters. I appreciate the opportunity to respond to your correspondence and look forward to continuing to work with you to bring the American public the intended benefits of the Act. Should you have any questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael K. Powell", written over the word "Sincerely,".

Michael K. Powell

Attachment